

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 06-O-12100-RAH
)	
EDWARD A. QUESADA,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 152910,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this original disciplinary proceeding, respondent Edward A. Quesada (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation for two years subject to certain conditions, including a 60-day period of suspension (with credit given for the period of inactive enrollment under section 6233).

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¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on December 17, 2007, in case no. 06-O-12100. The matter was assigned to the Honorable Richard A. Platel.

On January 15, 2008, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

Following a status conference, Judge Platel filed an order on February 4, 2008, referring this matter to the undersigned judge for evaluation of respondent's eligibility for participation in the court's ADP. This matter was reassigned to the undersigned judge for all further proceedings pursuant to an order filed on February 13, 2008.

On March 28, 2008, respondent submitted a declaration to the court which established a nexus between respondent's mental health issues and his misconduct in this matter. Respondent entered into a long-term Participation Plan with the LAP on May 21, 2008.

On March 28, 2008, the parties also entered into a Stipulation Re Facts and Conclusions of Law (Stipulation), which was received by the court that same day.

Following briefing by the parties, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP, and (2) the discipline which would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP. After agreeing to the alternative discipline recommendations, the court memorialized in writing the alternative discipline recommendations in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent executed a Contract and Waiver for Participation in the State Bar Court's ADP (Contract);² the court signed an order approving the parties' Stipulation;

² The Confidential Statement and Contract were lodged on July 29, 2008.

the Stipulation was filed; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP commenced on July 29, 2008.³

On August 4, 2008, the court issued an order pursuant to section 6233 enrolling respondent as an inactive member of the State Bar effective December 15, 2008.

On January 20, 2009, the court filed an order finding good cause to terminate respondent's involuntary inactive enrollment effective February 14, 2009.

On July 1, 2010, the court received a report from a mental health professional regarding respondent's mental stability which was satisfactory to the court. At a status conference on March 22, 2011, the court found that respondent has successfully completed the ADP, and this matter was submitted for decision on that date.⁴

Findings of Fact and Conclusions of Law

I. Culpability Findings

Case No. 06-O-12100 – The Sanchez Matter

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

Respondent stipulated to a willful violation of rule 4-100(A) for failing to maintain client funds in a trust account. He also stipulated that by misappropriating \$20,200 of his client's settlement funds, he committed acts involving moral turpitude and dishonesty in willful violation of section 6106.

II. Aggravation⁵

No aggravating circumstances are involved.

³ On August 4, 2008, the court filed an order finding that respondent is accepted into the ADP, and the start date of respondent's participation in the ADP is July 29, 2008.

⁴ The court's order finding that respondent has successfully completed the ADP was filed on March 24, 2011.

⁵ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

II. Mitigation

No Prior Record (Std. 1.2(e)(i).)

In mitigation, respondent has no prior record of discipline. Respondent had practiced law for 12 years at the time of his first act of misconduct.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

Respondent was experiencing intense marital discord in 2003, which resulted in contentious divorce proceedings from January 2004 to April 2006. In addition, it is appropriate to now consider respondent's successful completion of the ADP as a mitigating circumstance in this matter.

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent displayed spontaneous cooperation and candor with the State Bar during disciplinary investigation and proceedings in case no. 06-O-12100.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.2(a), and 2.3 and *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708; *Howard v. State Bar* (1990) 51 Cal.3d 215; *Bates v. State Bar* (1990) 51 Cal.3d 1056; *Chefsky v. State Bar* (1984) 36

Cal.3d 116; *Chasteen v. State Bar* (1985) 40 Cal.3d 586; *Waysman v. State Bar* (1986) 41 Cal.3d 452; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

Recommendations

It is hereby recommended that respondent Edward A. Quesada, State Bar Number 152910, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation⁶ for a period of two years subject to the following conditions:

Respondent Edward A. Quesada is suspended from the practice of law for the first 60 days of probation (with credit given for inactive enrollment, which was effective December 15, 2008, through February 13, 2009 (Bus. & Prof. Code, §6233)).

During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any

⁶ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period;

Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;

Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session; and

Within one year of the effective date of the discipline herein, respondent must supply to the Office of Probation, satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session; and

Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

At the expiration of the period of probation, if Edward A. Quesada has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied.

Multistate Professional Responsibility Examination

It is further recommended that Edward A. Quesada be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is further recommended that costs be paid with respondent's membership fees for the year 2012. If respondent fails to pay costs as described above, or as may be modified by the State Bar Court, costs are due and payable immediately.

Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),⁷ all other documents not previously filed in this matter are ordered sealed pursuant to 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to

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⁷ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June 14, 2011

RICHARD A. HONN
Judge of the State Bar Court